STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **THE DETROIT EDISON COMPANY** for approval of a large customer contract with William Beaumont Hospital.	)	Case No. U-11144

At the November 14, 1996 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. John C. Shea, Commissioner
Hon. David A. Svanda, Commissioner

OPINION AND ORDER

On July 29, 1996, The Detroit Edison Company (Detroit Edison) filed an application for approval of a special contract for the provision of electric service to William Beaumont Hospital (Beaumont). On November 7, 1996, Detroit Edison filed an amended contract that increases Beaumont's ability to remove load from the contract.

In its application, Detroit Edison states that it is committed to redefining its business relationship with its major customers and has therefore worked with them to develop mutually beneficial energy supply arrangements. It says that its large customers with multiple sites seek to be treated as single major customers rather than as a conglomeration of small individual customer facilities. It says that these customers also desire rates that give them the benefit of being a single large customer and they seek billing options that give them flexibility in structuring their payments and aggregating the demand at their facilities.

It says that the special contract with Beaumont provides for immediate price reductions, price certainty, and flexibility for customer choice. It says that the contract also provides corporate billings options and aggregation of demand. The contract requires Beaumont to purchase all of its electrical requirements from Detroit Edison for 10 years, although beginning in year six, Beaumont has the option to remove all load served under the contract upon payment of a sum established by the contract. Further, Beaumont is permitted to transfer load to more economic Detroit Edison tariffs that become available during the term of the contract.

According to Detroit Edison, the contract permits Beaumont to tailor its electric supply portfolio through use of a combination of firm and interruptible service options that are patterned after Detroit Edison's D-6 and D-8 rates. Firm service energy supplied under the contract will be exempt from Detroit Edison's power supply cost recovery (PSCR) factors through December 31, 1999, which is consistent with provisions contained in Detroit Edison's special manufacturing contracts with certain large automotive manufacturers. However, Detroit Edison adds that because both the sales and the average energy costs associated with firm service under the contract will be excluded for PSCR reconciliation purposes, there will be no adverse effects on other ratepayers. Further, according to Detroit Edison, the interruptible service option provides for a noncompliance charge for failure to interrupt when requested to do so and prohibits interruptible load from being converted to firm service during the contract term.

Detroit Edison notes that the Commission has approved tariffs and special contracts designed to address the needs of certain customers. It says that the contract with Beaumont is a continuation of the utility's commitment to implement innovative electric service offerings for its customers and to reduce their cost of doing business. It says that the contract is the product of negotiation and reflects the knowledge of both parties that the competitive market for energy is changing and will continue to change. It asserts that the rates and charges in the contract are therefore reasonable and in the public interest.

Detroit Edison says that the contract provides resource planning benefits, improves the business climate, establishes rates that better match the long-term declining price of its generation assets, retains Beaumont's contribution to system fixed costs, and reduces the utility's business risk and strengthens its financial position.

It says that the contract rates are above its marginal cost to produce energy and that it is not requesting a change in the cost of service for other customers to reflect the price reductions offered by the contract. It agrees that if it seeks to change the cost of service for other customers, it will bear the burden of demonstrating either that the contract prices and terms are justified on the basis of the cost of service or that the benefits to other ratepayers are substantial and outweigh the costs that are not recovered from Beaumont.

Finally, because the application does not request changes in the rates or charges to its other customers, Detroit Edison requests that the Commission approve the contract on an ex parte basis.

Discussion

The Commission concludes that it should approve the contract as reasonable and in the public interest. In reaching this conclusion, the Commission finds, in the absence of a reason to believe otherwise, that the parties to the contract protected their own interests and reached a mutually beneficial bargain. The Commission also finds that Detroit Edison should have leeway to negotiate prices and other terms as it sees fit, except when the contract provisions would violate statutes, rules, or Commission orders, would run afoul of clearly established Commission policies, would harm other ratepayers, or would otherwise detract from the public interest. On the other hand, the ratemaking treatment to be accorded to the contract is within the Commission's exclusive domain.

There are clear benefits in the contract for Detroit Edison, including the substantial certainty that it will retain Beaumont as a customer. There are clear benefits to Beaumont, including a reduction in rates. There are benefits for other customers, including retaining Beaumont's contribution to system fixed costs. There are benefits to the general public, including the economic effects of retaining and potentially expanding employment in the state.

The Commission also finds that other customers and the public interest are adequately protected. The primary concern in this regard is the future ratemaking treatment of the rate discount offered by the contract. In the application, Detroit Edison agrees that if it seeks to recover the discount from other customers, it will bear the burden of demonstrating either that the contract terms and prices are justified on the basis of the cost of service or it is more beneficial to other customers for Detroit Edison to retain Beaumont as a customer under the terms of the contract than to lose those sales.

These commitments are apparently patterned after the Commission's discussion in the March 23, 1995 order in Case No. U-10646 that approved contracts between Detroit Edison and General Motors Corporation, Ford Motor Company, and Chrysler Corporation and the Commission's October 25, 1995 order in Case No. U-10961 that approved a contract between Consumers Power Company (Consumers) and General Motors. The Commission said that it would not make a definitive ruling on the future ratemaking effects of the contracts, but discussed the general principles that should guide future Commission action:

> [T]he contracts are the product of Detroit Edison's negotiations. It follows that Detroit Edison should assume full responsibility for negotiating the discounted prices and that its shareholders should expect to absorb much, if not all, of any revenue shortfall caused by the pricing and other contract provisions that the utility negotiates. Therefore, unless Detroit Edison can make a compelling showing why a different ratemaking treatment is justified, the Commission will not permit Detroit Edison to reallocate the costs of serving contract customers to other ratepayer classes. To make a compelling showing for a different treatment, Detroit Edison would bear a substantial burden. This burden would require, at a minimum, a clear, convincing, and unequivocal demonstration either (1) that the contract prices and terms are justified on the basis of the cost of service, or (2) that the benefits for other (non-participating) ratepayers are substantial and have a value that outweighs the costs that are not recovered from the contract customers. Either showing would require support from a cost-of-service study that identifies and quantifies all costs incurred under the contracts. In addition, both showings would require Detroit Edison to demonstrate that its service provided in conjunction with the contracts has not, and will not in the future, impede the development of competition in its service territory.

March 23, 1995 order, Case No. U-10646, p. 21.

The Commission also indicated that other ratepayers should be protected from any underrecoveries of power supply costs and other surcharges and that if average PSCR costs increased as a result of incremental load attributable to the contracts, the added costs would be treated the same as any other category of unrecovered cost created by the contracts. March 23, 1995 order in Case No. U-10646, p. 20. To facilitate implementation of these protections, the Commission required Detroit Edison to treat service under the contracts as a separate rate class for purposes of cost allocation studies in future rate cases and to file annual reports showing actual contract revenues and hypothetical tariff rate revenues using the same billing determinants.

The Commission concluded that, taken as a whole, these protections increased the incentive for the utility to negotiate for the benefit of all customers and decreased the likelihood that contract customers would be subsidized by other customers. The Commission did not find it in the public interest for a utility to negotiate contracts under the belief that the Commission would necessarily shift to other customers the full discount offered by the contracts.

If Detroit Edison seeks to increase other customers' rates as a result of the contract, it is on notice that the principles discussed in the March 23, 1995 order in Case No. U-10646 and the October 25, 1995 order in Case No. U-10961 should apply. Furthermore, Detroit Edison will be required to account for the contract as a separate rate class in future cost of service studies and to file annual reports of actual contract revenues and hypothetical tariff rate revenues using the same billing determinants.

Approval of the contract does not increase any customer's rates. Therefore, the Commission may approve the contract without providing notice or an opportunity for a hearing, pursuant to MCL 460.6a(1); MSA 22.13(6a)(1).

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17101 et seq.

b. The contract should be approved as reasonable and in the public interest.

c. Ex parte approval is appropriate.

THEREFORE, IT IS ORDERED that the contract between The Detroit Edison Company and William Beaumont Hospital, attached to the amended application, is approved.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ John C. Shea
Commissioner

I concur, as discussed in my separate opinion.

/s/ David A. Svanda
Commissioner

By its action of November 14, 1996.

/s/ Dorothy Wideman
Its Executive Secretary

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CONCURRING OPINION OF COMMISSIONER DAVID A. SVANDA

I concur with my colleagues in approving the amended large customer contract between Detroit Edison Company (Detroit Edison) and William Beaumont Hospital (Beaumont) in Case No. U-11144. This contract contains provisions that allows Beaumont the opportunity to take advantage of competitive supply options in year six. Inclusion of the "buy-out" provision represents substantial progress by Detroit Edison to conform more closely to the January 1, 2001 deadline for retail wheeling recommended by Governor Engler. I appreciate the effort put forth by Detroit Edison and Beaumont to renegotiate these provisions.

While I am pleased with the progress made, I am troubled by Section 15 of the contract that requires Commission action on or before November 15, 1996 in order for Beaumont to receive the financial benefits retroactive to October 7, 1996. The amended contract was only filed with the Commission on November 7, 1996. And since Beaumont has little or no opportunity to determine when its contract is approved, I assume that this provision is Detroit Edison's subtle attempt to expedite the Commission's schedule. Manipulation of the Commission's agenda for deliberation is not well received by this Commissioner.

I also note that the effective date of the Beaumont contract results in the buy-out becoming operative in October, 2001, ten months later than the January 1, 2001 deadline for retail wheeling. The NHF contract (Case No. U-11124 - also approved today) buy-out provision is effective in September, 2001, and the buy-out provision for the MascoTech contract (Case No. U-11153) takes effect in July, 2001. I am alarmed by, what appears to be, a trend of slippage from the January 1, 2001 deadline for customer choice. My support for special contract approval in the future will depend on how closely customer choice opportunities conform to the Governor's deadline for retail wheeling.

Since the parties have agreed to the terms of this amended contract and consistent with my previous position in special contract cases for Wisconsin Electric Power Company (U-11032), Edison Sault Electric Company (U-11079), Detroit Edison Company (U-11078, U-11084, U-11153, and U-11124) and Consumers Power Company (U-11101), I concur.

MICHIGAN PUBLIC SERVICE COMMISSION

Commissioner